

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SANDI K. RIECHMAN
Claimant

VS.

EATON CORPORATION
Respondent,
Self-Insured

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Docket No. 233,081

ORDER

Claimant appealed the March 5, 2002 Award entered by Administrative Law Judge Robert H. Foerschler. The Board heard oral argument on September 4, 2002. Gary M. Peterson of Topeka, Kansas, was appointed and participated in this claim as Board Member Pro Tem.

APPEARANCES

L. Michael Schwartz of Overland Park, Kansas, appeared for claimant. Edward D. Heath, Jr., of Wichita, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for a June 29, 1997 stroke, which claimant contends was caused by the physically demanding work she performed relocating respondent's sales office. In the March 5, 2002 Award, Judge Foerschler denied claimant's request for workers compensation benefits, finding that claimant had failed to prove that her stroke was related to her work activities.

Claimant contends Judge Foerschler erred. Claimant argues that the evidence establishes a causal relationship between her June 26 and 27, 1997 work activities, which were allegedly unusually arduous, and her stroke. Accordingly, claimant requests the Board to modify the Award and grant her a permanent total disability and medical benefits.

Conversely, respondent requests the Board to affirm the Award.

The only issues before the Board on this appeal are:

1. Did claimant's June 26 and 27, 1997 work activities precipitate her June 29, 1997 stroke?
2. If so, did those activities require more exertion than claimant's usual work?
3. If so, what is the nature and extent of claimant's injury and disability?

In her application for review, claimant also raised the issue of whether she was entitled to receive medical benefits. That is not an issue that requires specific findings, as claimant would be entitled to receive those benefits in the event her stroke is found compensable under the Workers Compensation Act. In addition, claimant also contends the Judge erred by allowing respondent to file its submission letter after its terminal date. That issue is moot as this claim is now before the Board which performs a de novo review and makes its own findings and conclusions.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and the parties' arguments, the Board finds and concludes:

On June 26 and 27, 1997, claimant packed, stacked, unstacked and unpacked approximately 50 boxes, weighing five to 50 pounds each, as part of relocating respondent's Johnson County, Kansas, sales office. Sometime between 5 and 6 p.m. on June 27, 1997, claimant experienced weakness in the left side of her body, experienced difficulty walking and felt very fatigued. Shortly afterwards, claimant left work and went home. That evening claimant and her husband went to a barbecue contest. Claimant had difficulty walking to the contest site and required assistance returning to her car when she left for home.

The next morning, Saturday, June 28, 1997, claimant was unable to get out of bed without help. According to claimant, her left-sided weakness had worsened. Claimant stayed home that morning. But in the afternoon, claimant and her husband went grocery shopping. Claimant, who is left-hand dominant, was unable to write the check for the groceries. That evening, when claimant and her husband visited neighbors, claimant's husband had to assist her across the street.

On Sunday, June 29, 1997, claimant's husband had to help claimant out of bed. Later that day, while claimant was fixing dinner, claimant's left side became paralyzed,

causing her to fall to the floor. Claimant was taken to the Shawnee Mission Medical Center, where she was placed in critical care for treatment of a stroke.

Approximately a week later, claimant was transferred to the Mid-America Rehabilitation Hospital. After approximately one month of inpatient treatment, claimant was released to begin outpatient treatment. As a natural result of the stroke and in addition to the paralysis in both claimant's left upper and lower extremities, she developed reflex sympathetic dystrophy in her left upper extremity, frustration, anger, depression and attitude changes.

Although claimant was initially unable to walk, dress or feed herself, at the time of the regular hearing she had progressed to where she could walk without assistance and drive. Moreover, in January 1998 claimant returned to work for respondent performing inside sales in which she telephoned customers and provided job quotes. According to claimant, she was unable to perform that work and, therefore, discontinued that job on May 18, 1998, when she had the opportunity to obtain short-term disability benefits.

When claimant testified at the July 2001 regular hearing, she remained under medical treatment. Although claimant's condition had improved so that she could walk much better, her left side remained partially paralyzed preventing claimant from writing with her left hand. As of the regular hearing, claimant had not worked since leaving respondent's employment in May 1998.

1. Did claimant's June 26 and 27, 1997 work activities precipitate her June 29, 1997 stroke?

Two doctors provided their expert medical opinions regarding whether claimant's work activities in moving respondent's offices precipitated her June 29, 1997 stroke. The opinions are divergent.

Dr. Steven Simon, who practices physical medicine and rehabilitation and who began treating claimant on June 30, 1997, determined that claimant had suffered a dry stroke (one in which there is no spilled blood in the brain tissue) that had caused spasticity in her left side, abnormal coordination, impaired balance, impaired speech and abnormal facial muscles. The doctor diagnosed a cerebrovascular accident involving a distribution of the middle cerebral artery. Dr. Simon also diagnosed hypertension, anxiety and depression. When the doctor asked claimant how the stroke occurred, claimant related that she had been under a lot of stress.

Q. (Mr. Schwartz) Did she [claimant] subsequently relate to you how it occurred?

A. (Dr. Simon) We have -- she and I have discussed later to that date the fact that she had felt -- that she was under a lot of stress as indicated in the consult itself. She'd indicated for several months -- I think my consult says six months -- that she didn't feel right, and she had indicated to me that she felt that she was under a lot of stress.¹

According to Dr. Simon, claimant had three risk factors that increased her chances for a stroke -- smoking, drinking, and hypertension. The doctor testified that smoking doubles one's chances for a stroke. Before her stroke, claimant smoked approximately two packs a day. The doctor testified that drinking slightly increases the chances of a stroke. Before her stroke, claimant drank approximately six glasses of wine per day. Likewise, the doctor testified that hypertension is the most significant risk factor as it increases the risk of stroke by six-fold. Hypertension actually damages a vessel's inside lining, which increases the likelihood of a clot, and hardens the vessel, making the vessel less elastic and making the vessel more likely to suffer damage from the inside. And in this case, Dr. Simon definitely believes that claimant's stroke was caused by a clot forming in a vessel in her brain.

Dr. Simon also identified a fourth risk factor that increased claimant's blood pressure and the chances for a stroke -- stress. And the fact that claimant has now had a stroke increases her chances ten-fold for having another.

Nevertheless, Dr. Simon testified that moving respondent's office was unusual exertion that more probably than not precipitated claimant's stroke. The doctor testified, in part:

Q. (Mr. Schwartz) Do you have an opinion based upon the facts that I've given you today as to whether the unusual exertion of moving the sales office, would that be a precipitating or causal agent of her stroke that she suffered in June 1997?

Mr. Heath: Objection. Assumes facts not in evidence.

A. (Dr. Simon) Certainly any increase in stress, whether it's emotional stress or physical stress, can accelerate this process that I described earlier of damage to the inner lining of the blood vessel carrying blood into the brain leading to a thrombotic event causing stroke as Mrs. Riechman suffered.

Q. And with the risk factors that Mrs. Riechman had that you have previously identified, would the additional exertion of this move exacerbate those risk factors?

¹ Simon Depo. at 13-14.

A. Yes, it would.

. . . .

Q. Do you have an opinion based upon the facts that I have set forth for you today as to whether a move of the type described previously, would that have any effect on the stress level of Mrs. Riechman?

A. Yes.

Q. And what would that effect be?

A. It would increase the stress.

Q. And to increase the stress, what effect would that have with her existing risk factors?

A. It is very likely that it had a direct increase in the blood pressure and that has a secondary effect on the wall of the vessel and could have participated [*sic*] in what became a stroke.²

Dr. Simon also explained that claimant's stroke two days following the relocation of her office was consistent with this theory of causation. According to the doctor, there likely was a vasospastic event or series of events that began shortly after the physical work that led up to the hemiplegia that caused claimant's collapse two days later. Because claimant had a dry stroke, the doctor believes a process was probably set in motion by claimant's work activities that led to the stroke.

The hypothetical situation that you asked me to assume . . . would indicate that there was likely a vasospastic event or series of events that began shortly thereafter -- shortly after the work itself. Therefore, it is -- that sets up a scenario of cause and effect which was much more closer temporally related than something that happens a day or so later. The effect of the stroke we know occurred. We know that the hemiplegia occurred on the 29th. And again, the -- this was not a bleed stroke, and I think it's important to differentiate from a wet stroke which would have been expected to occur at the time of. So the fact that we had a dry stroke means that a process could well have been set in motion at a time before leading up to the stroke in the short time, a day or so following.³

² *Id.* at 36-37.

³ *Id.* at 38-39.

But on cross-examination Dr. Simon testified that, due to the risk factors of hypertension, smoking and drinking, it was not beyond the realm of medical probability that claimant would have experienced the June 29, 1997 stroke regardless of her work activities.

Respondent hired Dr. Philip R. Mills, who is also a specialist in physical medicine and rehabilitation, to review claimant's medical records and provide his opinions for purposes of this claim. Although Dr. Mills considers Dr. Simon an excellent physician and personal friend, Dr. Mills significantly disagrees with Dr. Simon's opinion regarding the cause of claimant's stroke. Dr. Mills could not determine within a reasonable degree of medical probability that claimant's work caused her stroke. In an August 27, 2001 letter to respondent's attorney, Dr. Mills wrote, in part:

It is clear that Sandra [claimant] had a substantially increased risk of stroke, in order of significance, first from her hypertension, second from her smoking, third from her hypercholesterolemia, fourth from obesity (this is unlikely to play a significant role in this patient, although she is moderately overweight), fifth from her alcoholic history, and sixth would be a Type A personality. The greatest predictor of stroke is hypertension and the effects of the probability of stroke are directly related to the length of time a person has hypertension and the severity of the hypertension.

It is certainly unfortunate that this lady had a stroke but not unexpected and within a reasonable degree of medical probability, I could not state that this stroke was job related. More probably it was the underlying factors.

On cross-examination, however, Dr. Mills revealed he had little information upon which he concluded that claimant was overweight or was a Type A personality. Moreover, the doctor had little information regarding the severity of claimant's hypertension before the June 29, 1997 stroke.

The Board finds that claimant's testimony is persuasive that she began experiencing symptoms in her left side on June 27, 1997, after moving and unpacking the boxes used in relocating respondent's office. Moreover, the Board finds Dr. Simon's opinion persuasive that claimant's work activities more probably than not precipitated a vasospastic event that led to the June 29, 1997 stroke. Consequently, the Board concludes that claimant's stroke was a direct consequence of her June 27, 1997 work activities.

2. Did claimant's June 27, 1997 work activities require more exertion than claimant's usual work?

Before a stroke is compensable under the Workers Compensation Act, it must be established that the work that precipitated the stroke required more exertion than the employee's usual work.⁴

Claimant sold electrical products to electrical contractors. Before the June 1997 stroke, the most strenuous work activity that claimant regularly performed was driving to appointments and carrying a briefcase that weighed approximately five pounds. Approximately twice a year claimant would carry product samples weighing approximately 25 pounds.

The work activity that precipitated claimant's stroke was packing, stacking, moving and unpacking 50 or so boxes, some of which were quite heavy, in relocating respondent's office. The Board concludes that the physical exertion in moving and unpacking the boxes exceeded the physical exertion of claimant's usual work. Consequently, the Board concludes that claimant's June 29, 1997 stroke is compensable under the Workers Compensation Act.

3. What is the nature and extent of claimant's disability?

The Board is persuaded by Dr. Simon's opinions regarding claimant's ability to work. Accordingly, the Board concludes that claimant is unable to work in the open labor market and, therefore, entitled to receive permanent total disability benefits.

As indicated above, claimant's left side remains partially paralyzed. In addition, claimant experiences pain in her left upper extremity from reflex sympathetic dystrophy and shoulder problems that developed as a natural consequence of the stroke. Claimant's condition has improved enough to allow her to function in a home setting with someone else taking care of paying the bills and the upkeep of the home. But claimant did not recover to the point that she could return to work in the open labor market.

According to Dr. Simon, claimant will not recover functional use of her left arm and her cognitive status will not improve any more than it already has. If anything, claimant's dysfunction and deficits will increase with age. Dr. Simon testified, in part:

She is permanently and totally disabled due to the impairment that she suffers from the stroke. She has sensory deficits, motor deficits, cognitive deficits and emotional deficits that are related to the stroke. These all contribute to the fact that she is not able to be productive in the work force and as such becomes totally disabled.⁵

⁴ K.S.A. 1996 Supp. 44-501(e).

⁵ Simon Depo. at 30.

Moreover, Dr. Simon also explained how claimant has problems with frontal lobe syndrome, which was caused by the stroke, that adversely affected her ability to tolerate and respond to people in a socially acceptable manner.

Dr. Mills did not provide an opinion regarding claimant's ability to work. But a February 5, 1998 medical report from Dr. Carabetta, which claimant entered into the record at Dr. Mills' first deposition, indicates that claimant had improved to the point that she was driving and also capable of returning to work.

Considering, in part, the time that Dr. Simon has spent with claimant as one of her treating physicians, the Board finds Dr. Simon's opinions regarding claimant's ability to work the more persuasive. Dr. Simon's opinions, coupled with claimant's testimony, lead the Board to conclude that claimant is unable to work in the open labor market. Consequently, the Award should be reversed to award claimant a permanent total disability.

AWARD

WHEREFORE, the Board reverses the March 5, 2002 Award and grants claimant a permanent total disability. Claimant is also awarded medical benefits, including reimbursement, for all the reasonable and necessary medical expenses incurred by claimant for treatment directly related to her stroke.

Sandi K. Riechman is granted compensation from Eaton Corporation for a June 27, 1997 accident and resulting disability. Ms. Riechman is entitled to receive 369.82 weeks of disability benefits at \$338 per week, or \$125,000, for a permanent total disability and a total award not to exceed \$125,000.

As of July 7, 2003, Ms. Riechman is entitled to receive 314.43 weeks of permanent total disability benefits at \$338 per week, or \$106,277.34, which is ordered paid in one lump sum less any amounts previously paid. Thereafter, the remaining balance of \$18,722.66 shall be paid at \$338 per week until paid or until further order of the Director.

Claimant is also entitled to receive authorized and unauthorized medical benefits. Further, claimant's ongoing medical benefits should not be terminated by respondent without an appropriate order.

The Board adopts the order for payment of transcript costs as set forth in the March 5, 2002 Award.

IT IS SO ORDERED.

Dated this ____ day of July 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

The undersigned respectfully dissents from the opinion of the majority in the above matter. The claimant was awarded benefits for a permanent total disability as a result of injuries suffered on or about June 27, 1997. Claimant's condition involved a stroke, which according to the majority, occurred as a result of excess exertion by claimant on the Friday prior to claimant's admission to the hospital. This Member would find that claimant did not prove that she suffered accidental injury arising out of and in the course of her employment as the stroke actually occurred on the Sunday while claimant was home with her family.

When dealing with workers compensation litigation in Kansas, in order to collect benefits a claimant must prove that she suffered an accidental injury arising out of and in the course of her employment.

The phrase "out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment.⁶

⁶ *Newman v. Bennett*, 212 Kan. 562, Syl. ¶ 1, 512 P.2d 497 (1973).

The phrase “in the course of” employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer’s service.⁷

In this instance there is a dispute regarding when claimant’s symptoms began. Claimant testified at regular hearing that her symptoms began as early as Friday night between five and six o’clock after she finished moving the boxes. However, when claimant was first admitted to the hospital on the weekend of the stroke, she advised the hospital employees that she felt fine on Friday night and did not begin experiencing symptoms until the next day.

In addition, as noted in the majority opinion, claimant has several risk factors which clearly place her at risk for this type of stroke. Claimant has hypertension, drank several glasses of wine daily and is a long-term smoker. Claimant’s addiction to smoking was made clear in the medical records of her treating physician, Dr. Steven Simon. Dr. Simon advised claimant on numerous occasions that smoking was bad for her. In his May 22, 1998 letter to Robert H. Kurth, M.D., Dr. Simon expressed excitement that claimant was actually going to stop smoking on her own. His later letters expressed significant disappointment that claimant was unable to follow through with her plan to stop smoking. Dr. Simon regularly advised claimant that smoking was a serious threat to her ongoing health and put her in line for additional strokes.

Dr. Philip R. Mills also considered claimant’s alcohol intake, hypertension and smoking as factors in determining that claimant’s stroke, while not unexpected, did not occur as a result of her job-related duties. He felt it was more probably “the underlying factors.”

Additionally, Dr. Simon stated, in his March 25, 1999 letter to claimant’s attorney, that claimant’s stroke occurred while she was at work. While he attempted to explain that discrepancy in his deposition, it nevertheless appeared to be a significant factor in his initial conclusions. Dr. Simon ultimately acknowledged that it was medically probable that claimant’s stroke would have occurred regardless of her work activities.

In workers compensation litigation it is claimant’s burden to prove her entitlement to benefits by a preponderance of the credible evidence.⁸ This Board Member would find that claimant has failed to prove a connection between her June 29, 1997 stroke and the work activities performed on June 27, 1997 at her office. This Board Member would, therefore, affirm the determination by the Administrative Law Judge that claimant has failed

⁷ *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 197-198, 689 P.2d 837 (1984).

⁸ K.S.A. 44-501 and K.S.A. 2002 Supp. 44-508(g).

by a preponderance of the credible evidence to prove that she suffered accidental injury arising out of and in the course of her employment and benefits should be denied.

BOARD MEMBER

c: L. Michael Schwartz, Attorney for Claimant
Edward D. Heath, Jr., Attorney for Respondent
Robert H. Foerschler, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director